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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: SHAWN D. SPITZER)
Serial No.: 10/647,992) Ex: GARRETT
Filed: 26 AUGUST 2003) Art Unit: 3736
For: UNIFORM SEAT COVER AND SEAT)
FASHIONED WITH SAME)

TRANSMITTAL OF APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Enclosed is the Brief for Appellant and two copies of the same, in compliance with the Rules, in the above captioned matter and postcard for return receipt.

Respectfully submitted,

Michael W. Goltry
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01 May 2006

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CERTIFICATE OF MAILING

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450.

Dear Sir:

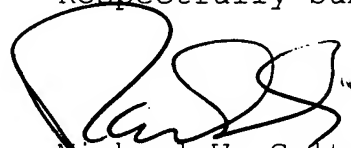
I hereby certify that the attached Brief for Appellant and two copies of same; Transmittal Letter; Check for Appropriate Fee and a postcard are being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents P.O. Box 1450 Alexandria, VA 22313-1450, on 01 May 2006.


Signature

01 May 2006

01 May 2006
Date

Respectfully Submitted,



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PATENT
Serial No.: 10/647,992

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:
Spitzer, Shawn D.

Art Unit: 3636

Serial No.:
10/647,992

Examiner: Garrett, Erika

Filed:
26 August 2003

For: UNIFORM SEAT COVER AND SEAT FASHIONED WITH SAME

BRIEF FOR APPELLANT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Mail Stop APPEAL BRIEF-PATENTS

SIR:

Please consider the contents of the following Brief for
Appellant.

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I. REAL PARTY IN INTEREST

All of the right, title and interest in and to the above-described Patent Application are owned by Appellant Shawn D. Spitzer, who is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences, or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF THE CLAIMS

1. Claims 1-23 were originally filed in this case. Claims 2 and 6-23 were canceled. Claim 1 was amended four times. Claims 3-5 were each amended once. Claims 1 and 3-5 are pending in this case.
2. A copy of claims 1 and 3-5, the claims on appeal, is provided in Claims Appendix A.
3. Claims 1, 3, and 4 stand rejected under 35 USC § 103(a) as being unpatentable over Takamatsu, U.S. Patent 4,036,524, in view of Melone, U.S. Patent 5,707,107.
4. Claim 5 stands rejected under 35 USC § 103(a) as being unpatentable over Takamatsu, U.S. Patent 4,036,524, in view of Estes, U.S. Patent 4,694,511.

IV. STATUS OF AMENDMENTS FILED SUBSEQUENT TO FINAL REJECTION

No response to the final rejection mailed 14 December 2005 was mailed and no amendments to the specification or claims were proposed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 1

The subject matter claimed in independent claim 1, on appeal, which is disclosed on pages 8-21 of Appellant's specification, consists of a seat 30 including a seat portion 31 and an attached seat back portion 32. (lines 9-10, page 8 of the specification in conjunction with FIG. 1). A top 21, having a lower end 43, is fitted over the seat back portion 32. (lines 8-9, page 8, line 5, page 11, and lines 1-4, page 13, of the specification in conjunction with FIGS. 1 and 4). A bottom 22, having a rearward end 53, is fitted over the seat portion 31. (lines 9-10, page 8, lines 12-14, page 11, and lines 1-4, page 13, of the specification in conjunction with FIGS. 1 and 4). An engagement assembly 92 is carried by one of the lower end 43 of the top 21 and the rearward end 53 of the bottom 22, and a complementary engagement assembly 93 is carried by the other of the lower end 43 of the top 21 and the rearward end 53 of the bottom 22. (lines 1-5, page 16, of the specification in conjunction with FIG. 5). The engagement assembly 92 is detachably engaged to the complementary engagement assembly 93 thereby detachably engaging the lower end 43 of the top 21 to the rearward end 53 of the bottom 22. (lines 1-5, page 16, of the specification in conjunction with FIG. 5). The top 21 supports first uniform adornment, and the

bottom 22 supports second uniform adornment, in which the first and second uniform adornments together form the top 21 and bottom 22 as an identifying uniform of a member of an organization. (line 4, page 10, to line 24, page 12, of the specification in conjunction with FIGS. 1-3).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 3, and 4 stand rejected under 35 USC § 103(a) as being unpatentable over Takamatsu, U.S. Patent 4,036,524, in view of Melone, U.S. Patent 5,707,107. The first issue to be resolved in this appeal is, therefore, whether claims 1 and 3-4 are patentable over Takamatsu, U.S. Patent 4,036,524, in view of Melone, U.S. Patent 5,707,107.

Claim 5 stands rejected under 35 USC § 103(a) as being unpatentable over Takamatsu, U.S. Patent 4,036,524, in view of Estes, U.S. Patent 4,694,511. The second issue to be resolved on appeal is, therefore, whether claim 5 is patentable over Takamatsu, U.S. Patent 4,036,524, in view of Estes, U.S. Patent 4,694,511.

VII. ARGUMENT

Issue #1: whether claims 1, 3, and 4 are patentable over Takamatsu, U.S. Patent 4,036,524, in view of Melone, U.S. Patent 5,707,107.

Claims 1, 3, and 4 stand rejected under 35 USC § 103(a) as being unpatentable over Takamatsu, U.S. Patent 4,036,524, in view of Melone, U.S. Patent 5,707,107. Appellant respectfully traverses this rejection. The claims are presented in one group by the examiner, that group of claims now on appeal being claims 1, 3, and 4. None of the claims necessarily stands or falls together.

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). Further, a prior art reference must be considered in its entirety, i.e. as a whole, including portions that would lead away from the claimed invention. *W. L. Gore & Associates, Inc. v Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert.

denied, 469 U.S. 851 (1984). "All words in a claim must be considered in judging patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 165 USPQ 494. 496 (CCPA 1970).

From the language of claim 1 it can be seen that several specific elements are included in the claimed architecture. First, a seat includes a seat portion and an attached seat back portion. Second, a top has a lower end and is fitted over the seat back portion. Third, a bottom has a rearward end and is fitted over the seat portion. Fourth, an engagement assembly is carried by one of the lower end of the top and the rearward end of the bottom. Fifth, a complemental engagement assembly is carried the other of the lower end of the top and the rearward end of the bottom. Sixth, the engagement assembly is detachably engaged to the complemental engagement assembly detachably engaging the lower end of the top to the rearward end of the bottom. Seventh, the top supports first uniform adornment. Eighth, the bottom supports second uniform adornment. Ninth, the first and second uniform adornments together form the top and bottom as an identifying uniform of a member of an organization. Each of these elements specifically describes a feature or structure of the invention.

The nine basic elements of claim 1 are specific components of the claimed invention and specifically describe how the top and the bottom are arranged and attached to one another in relation to the seat portion and the seat back portion, and how the first and second uniform adornments together form the top and bottom as an identifying uniform of a member of an organization. As can be seen from the plain language of the claim, these elements are not simply characteristics that occur naturally or inherently.

On page 2 of paper no. 20051207, the examiner states that Takamatsu shows the use of all the claimed invention but fails to show the use of the uniform adornment of the top and bottom that identifies a member of an organization and a neck opening. The examiner cites Melone for teaching the use of a uniform top and bottom supporting uniform adornment that identifies a member of an organization, a neck opening, and arm openings, and concludes that it would have been obvious to modify the uniform top and bottom with adornment as taught by Melone, in order to show support and team spirit to the organization. Appellant disagrees.

The references used to support a section 103 rejection must generally place the needed subject matter supporting the obviousness rejection in the public domain before the date of

invention. *In re Zenitz*, 333 F.2d 924, 142 USPQ158, 160 (C.C.P.A. 1964). Also, the test for obviousness is not whether the features of one reference may be bodily incorporated into another reference. Rather, one must consider whether the combined *teachings* render the claimed subject matter obvious. *In re Wood*, 599 F.2d 1032, 202 USPQ 171, 174 (C.C.P.A. 1979) (emphasis added) (citing *In re Bozek*, 416 F.2d 1385, 1390, 163 U.S.P.Q. 545, 549-50 (C.C.P.A. 1969); *In re Mapelsden*, 329 F.2d 321, 322, 141 USPQ 30, 32 (C.C.P.A. 1964)). Furthermore, the incentive to combine the teachings of the references must be explained by the examiner if it is not readily apparent from the references. *Ex parte Skinner*, 2 USPQ 2d 1788, 1790 (B.P.A.I. 1987).

In the present case, the examiner's obviousness rejection fails for at least two reasons. First, the examiner relies on Melone for teaching a top and a bottom, but has failed to cite any structure or disclosure from Melone showing a top and a bottom. Melone teaches a seat back cover. Missing in Melone is a bottom. The examiner relies on Melone for teaching a bottom, but does not cite one in Melone, because there simply is none to cite. Accordingly, the examiner cannot rely on Melone for teaching a bottom, for teaching a top and a bottom, and for teaching first and second uniform adornments supported by a top and a bottom that together form the top and bottom as

an identifying uniform of a member of an organization. Because Appellant's claim 1 specifies first and second uniform adornments supported by a top and a bottom that together form the top and bottom as an identifying uniform of a member of an organization, the combination of Melone with Takamatsu is incapable of teaching Appellant's claimed first and second uniform adornments supported by a top and a bottom that together form the top and bottom as an identifying uniform of a member of an organization. Accordingly, the examiner's section 103 rejection using Takamatsu and Melone fails.

The second reason the examiner's section 103 rejection fails is that Melone does not show a top supporting first uniform adornment, and a bottom supporting second uniform adornment, in which the first and second uniform adornments together form the top and bottom as an identifying uniform of a member of an organization. Although the examiner cites Melone for teaching the use of a uniform top and bottom supporting uniform adornment that identifies a member of an organization, Melone only teaches a top and the top in Melone does not have uniform adornment identifying the top as an identifying uniform of a member of an organization. Although Melone does teach a logo applied to the top being representative of a particular school, club, team or organization, nothing applied to the top in Melone functions

to identify the top as an identifying uniform, or uniform top, of a member of an organization according to the claimed invention. A logo identifying a particular organization is something entirely different from uniform adornment applied to a top that identifies the top as the identifying uniform top of a member of an organization. Accordingly, the examiner's section 103 rejection using Takamatsu and Melone fails.

The combination of Takamatsu with Melone cannot possibly render Appellant's claims obvious because Melone does not teach a bottom and is, therefore, not capable of showing first and second uniform adornments supported by a top and a bottom that together form the top and bottom as an identifying uniform of a member of an organization. An invention does not make itself obvious; that teaching or suggestion must come from the prior art and not from the Appellant's specification as in the present case.

For the foregoing reasons, claim 1 is not obvious over Takamatsu in view of Melone.

Claims 3 and 4

As explained above, the combination of Takamatsu and Melone cannot possibly disclose the limitations of claim 1 and claim 1 is allowable. Claims 3 and 4 are dependent upon claim

1 and are, therefore, also allowable, which renders moot the rejection of claims 3 and 4. In other words, claims 3 and 4 are each dependent upon a claim that is allowable according to the argument set forth above and, therefore, each of them is allowable.

The examiner cites Melone for teaching the use of a uniform top including a neck opening, and arm openings, but fails to cite this structure in Melone, because these structural features are not in Melone. Melone does not teach arm openings, and it does not teach a neck opening in the top forming the neck opening of a uniform top. The opening in the "hood" portion of the seat back covers of Melone as shown in FIGS. 2 and 4 are not neck openings as relating to the uniform top of a uniform.

Issue #2: Whether claim 5 is patentable over Takamatsu, U.S. Patent 4,036,524, in view of Estes, U.S. Patent 4,694,511.

Claim 5 stands rejected under 35 USC § 103(a) as being unpatentable over Takamatsu, U.S. Patent 4,036,524, in view of Estes, U.S. Patent 4,694,511. Appellant respectfully traverses this rejection.

Claim 5

As explained above, the teachings of Takamatsu and/or Melone fail to disclose the limitations of claim 1 and claim 1 is allowable. Claim 5 is dependent upon claim 1 and is, therefore, also allowable, which renders moot the rejection of claim 5. In other words, claim 5 is dependent upon a claim that is allowable according to the argument set forth above and, therefore, is allowable.

Summary

Takamatsu clearly does not disclose the claimed invention and no suggested modification of Takamatsu with Melone can possibly achieve the structural limitations of the claimed invention. Accordingly, Appellant respectfully asserts that claims 1 and 3-5 are now in condition for allowance. Appellant therefore prays for the reversal of the final rejection and the allowance of the subject application.

Pursuant to the foregoing, Appellant believes that the rejection of claim 1 is supported by a faulty analysis of Takamatsu and Melone and is quite incorrect, and that the rejection thereof and of the corresponding dependent claims 3-5 are moot and should be withdrawn. Accordingly, any rejection not specifically addressed is not to be construed as

an admission that the Examiner's position is correct or agreed upon, or that Appellant concedes the Examiner's position. Quite the contrary, each and every rejection set forth by the Examiner is believed to be based on an entirely incorrect analysis of Takamatsu and Melone as explained herein and are respectfully traversed.

Date: 5/1/2006

Respectfully submitted,

Shawn D. Spitzer

A large, stylized handwritten signature in black ink, appearing to be 'M. Goltry'.

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CLAIMS APPENDIX A

1. Apparatus comprising:

a seat including a seat portion and an attached seat back portion;

a top, having a lower end, fitted over the seat back portion and a bottom, having a rearward end, fitted over the seat portion;

an engagement assembly carried by one of the lower end of the top and the rearward end of the bottom;

a complementary engagement assembly carried by the other of the lower end of the top and the rearward end of the bottom;

the engagement assembly detachably engaged to the complementary engagement assembly detachably engaging the lower end of the top to the rearward end of the bottom;

the top supporting first uniform adornment;

the bottom supporting second uniform adornment;

the first and second uniform adornments together forming the top and bottom as an identifying uniform of a member of an organization.

3. Apparatus of claim 1, wherein:

the seat back portion includes a lower end attached to the seat portion and an opposing upper end; and

the top includes a neck opening situated at the upper end of the seat back portion.

4. Apparatus of claim 3, wherein the top includes sleeves located on either side of the neck opening.

5. Apparatus of claim 3, wherein the top includes arm openings located on either side of the neck opening.

EVIDENCE APPENDIX B

There is no evidence submitted pursuant to 37 C.F.R.
§§1.130, 1.131, or 1.132 or any other evidence entered and
relied upon in this appeal.

RELATED PROCEEDINGS APPENDIX C

There are no copies of decisions rendered by a court or the Board in any proceeding because there are no other appeals, interferences, or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.